

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1131 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

MALEK RASULMIYA ALADMIYA

Versus

PATEL PARSHOTTAMDAS SHIVABHAI

Appearance:

MR NS DESAI for Petitioner

MR DF AMIN for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 08/07/97

ORAL JUDGEMENT

1. This Civil Revision Application under Section 29(2) of the Bombay Rent Act is filed by original defendant No.2 against respondent No.1 who is the original plaintiff challenging the legality and validity of the decree of eviction passed by two courts below.

2. The respondent No.1 plaintiff who is the manager

of Patidar Panch, a public trust filed the suit against the present petitioner, who is defendant No.2 and defendant No.1, who is now represented by heirs and legal representatives.

3. The suit being Regular Civil Suit No. 92 of 1970 was filed in the court of Civil Judge, Junior Division, Umreth for a decree of possession and arrears of rent firstly on the ground that the original tenant was in arrears of rent for a period of more than six months despite notice under Sec. 12(2) of the said Act and also on the ground that the original tenant has sublet the premises to the present petitioner who happens to be the nephew of the original tenant.

4. The defendants appeared and resisted the suit by filing the written statement at Exhibit -11. On the pleadings of the parties, the trial court framed necessary issues and after recording the evidence of the parties, the Civil Judge, Junior division Umreth decreed the suit of the plaintiff against the present petitioner and deceased defendant No.2 by holding that the provisions of the Bombay Rent Act are not applicable to the present suit and that the present suit is governed under the provisions of Transfer of Property Act and that, therefore, the decree for possession was required to be passed on the ground of subletting.

5. Being aggrieved by the said judgment and decree, the defendant preferred Regular Civil Appeal No. 61 of 1986 to the court of District Judge, Kheda at Nadiad and the Extra Assistant Judge confirmed the decree of eviction passed by the trial court, but held that the provisions of Bombay Rent Act were applicable to the suit and that the suit was not governed by the provisions of the Transfer of Property Act. He also held that the landlord was successful in proving that the premises which were leased were sublet to Malek Rasulmiya Aladmiya. The tenant did raise a ground of disclaimer by contending that the property was running in the name of one Abdul Raju as per Exhibits 181, 183 to 185 but, as per Exhibit 88, the name of the respondent in the appeal was for the first time shown as owner of the premises. The lower appellate court has in this connection referred to the earlier proceeding between the parties in Civil Suit No. 264 of 1969 and found that the case of the present petitioner that the plaintiff was not the owner of the premises could not be believed. The lower appellate court found that from the evidence it was established that the respondent had become the owner of the disputed room and, therefore, it was not necessary to

decide as to whether he has the right to maintain the suit for possession or not.

6. On the question of subletting, the lower appellate court found that it was proved as per the admission of the defendant. The court also found that in the written statement at Exhibit 11, it was admitted that the appellant No.2 before the lower appellate court was residing in the disputed premises which would impliedly mean that the appellant No. 1 was not residing on the suit premises and that he has transferred the suit premises to appellant No.2 before the lower appellate court. It was also found by the lower appellate court that appellant No.2 was in possession of the premises. The case of both the appellants before the lower appellate court was that appellant No.2 is tenant of Abdul Rajumiya and not of respondent and the same fact was not proved by the appellant and therefore the court found that subletting by one defendant to the other was proved. As regards question of consideration from the sub-tenant to the head tenant, the court found that from the circumstances proved and existing, it could be reasonably inferred that one defendant has sublet the suit premises to another defendant. The court also found that there cannot be any direct evidence of consideration being paid by the sub-tenant to the head tenant. For such fact is to be proved by necessary permissible inference from the facts and circumstances. In that view of the matter, the court found that the defendant No.1 was not in possession of the suit premises and that the defendant No.2 was in possession of the suit premises and he was also not in a position to show as to how and under what circumstances defendant No.2 came to be in possession of the suit premises. The court therefore found that the decree for possession was required to be passed under Sec. 13(1)(e) of the Bombay Rent Act and accordingly the suit for possession was decreed by the lower appellate court by the judgment and decree dated 16th February, 1990.

7. Mr. N.S. Desai, learned counsel appearing for defendant No.2 who is held to be the sub-tenant argued vehemently before the court that in fact the grounds of sub-tenancy was not proved inasmuch as passing of consideration from one defendant to another defendant was not proved and secondly he submitted that in fact both the defendants were residing in one room. On the other hand, Mr. D.F. Amin, learned counsel appearing for the Patidar Panch, original plaintiff submitted that out of the four rooms, three rooms are already in possession of the Panch and this room which was let out to the tenant

is already sublet by him without the permission of the landlord written or oral and that the court below were justified in passing a decree of possession under Sec. 13(1)(e) of the said Act.

8. It is required to be noted that concurrent findings of facts are reached by two courts below on the ground of subletting and it is found that the premises were sublet by the defendant No.1 to defendant No.2. It is also pertinent to note that the defendant No.1 has not preferred any revision application before this court and only the defendant No.2 has preferred the present Civil Revision Application. The findings of facts reached by two courts below are even otherwise unassailable and from the facts and circumstances proved, it could be reasonably inferred that the defendant No.2 was inducted as sub-tenant for consideration and, therefore, the tenant has not even cared to prefer Civil Revision Application and the sub-tenant has come before this court. The ground of sub-tenancy having been concurrently proved on facts before the two courts below, in my opinion, no ground is made out which would call for interference of this court as no error of law is pointed out which would justify interference with a decree of eviction on the ground of subletting. In the result, the present Civil Revision Application fails and is dismissed. Rule is discharged.

9. At this stage, Mr. N.S. Desai, learned counsel appearing for the defendant No.2 - sub-tenant petitioner herein, requests the court to grant some reasonable time to the sub-tenant to vacate the premises on usual terms and conditions:

10. Mr. D.F. Amin, learned counsel appearing for the respondents has no objection to some reasonable time being granted. In view of the aforesaid, the time to vacate the suit premises is granted to the heirs and legal representatives of defendant No.2 - petitioner herein on filing undertaking in this court within four weeks from today containing the following stipulations:

1. All heirs and legal representatives who are impleaded as petitioners are the sons in possession of the suit premises and that none else is in possession thereof.
2. All of them shall hand over peaceful and vacant possession of the suit premises to the plaintiff on or before 31st December, 1999.

3. All heirs and legal representatives shall pay up the arrears of rent, if any, till date and shall continue to pay the mesne profits at the rate at which the rent is fixed by the trial court.
4. That the heirs and legal representatives of the defendant No.2 who are impleaded as petitioners in the present petition shall not transfer, alienate, sublet and/or induct anyone else into possession of the suit room during the aforesaid period and shall hand over peaceful and vacant possession on or before 31st of December, 1999.
5. In case, the undertaking as aforesaid on oath by all heirs and legal representatives of the petitioner is not filed in this court, the decree for possession passed in favour of the original plaintiff shall operate and plaintiff shall be at liberty to execute the same at once.

Rule is accordingly discharged subject to the aforesaid terms and conditions. At interim stay granted by this court is vacated.

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